XI-HC-78

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.83/00 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

CORAM: **HON'BLE MR. L.C. BHADOO &**
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.83 OF 2000

APPELLANT (In jail) — Nakchhed Sahu, son of Dasram Sahu, aged about 40 years, resident of Devrani, P.S. Jaijaipur, District Janjgir-Champa (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, through Police Station Jaijaipur, District Janjgir Champa (C.G.)

Present : Mr. Abhay Tiwari, Advocate for the appellant.

Mr. Ashish Shukla, Addl. Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State.

ORAL JUDGMENT

(Passed on 16TH March, 2007)

Following judgment order of the Court was passed by L.C. Bhadoo, J:

Today, this appeal was listed for admission, however, learned counsel for the accused/appellant submitted that since the accused/appellant is in detention for last about 7 years, therefore, this appeal itself be heard finally, on which learned counsel for the State submits that he is also ready to argue the matter finally, accordingly, the appeal is being heard finally.

This appeal is directed against the judgment of conviction and order of sentence dated 5th October, 2000 passed by the Additional Sessions Judge, Sakti, District Bilaspur in Sessions Trial No.201/2000 whereby the

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आदेश पत्रक (पूर्वानुबद्ध)

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Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C, for committing murder of his wife Kachra Bai, sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

The case of the prosecution, in brief, is that on 1.4.2000 at about 9.00 a.m. Phoolsai lodged a report in the Police Station Jaijaipur to the effect that when he received information regarding death of Kachra Bai, wife of accused/appellant, he went to the house of accused and saw that Kachra Bai was lying dead. Thereafter, he informed villagers and reported the matter. Based on this, First Information Report (Ex.P-6) was registered and the accused was taken into custody. The Investigating Officer left for the place of occurrence and after issuing notice (Ex.P-10) to the Panchas prepared the inquest report (Ex.P-11) on the body of Kachra Bai. While in police custody the accused gave memorandum (Ex.P-8) regarding *rapa*, weapon of offence and in pursuance of that he got recovered *rapa*, under Ex.P-13. Blood stained clothes of accused were seized under Ex.P-14. Site Plan (Ex.P-15) was prepared. Dead body of Kachra Bai was sent for postmortem examination to the Community Health Centre, Jaijaipur under Ex.P-17, where Dr. S. Kachchhap conducted postmortem examination and prepared postmortem report Ex.P-22. The doctor opined that cause of death of Kachra Bai, wife of Nakchhed, is haemorrhage & shock due to incised wounds over the neck resulted in injury to air passage, great vein, artery, nerve muscles and mode of death is homicidal. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where report Ex.P-30 was received.

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After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate 1st Class, Jaijaipur, who in turn committed the case to learned Sessions Judge, Bilaspur from where learned Additional Sessions Judge, Sakti had received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined 23 witnesses. Statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that witnesses have deposed against him on account of animosity.

After hearing learned counsel for respective parties and perusal of the record, learned Additional Sessions Judge convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. Abhay Tiwari, learned counsel for the accused/appellant and Mr. Ashish Shukla, Addl. Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State.

Learned counsel for the accused/appellant has not disputed the homicidal death of Kachra Bai. Moreover, Dr. S. Kachchhap (PW-20) has stated that on 1.4.2000 he conducted postmortem on the body of Kachra Bai and he noticed as many as eight incised wounds. Carotid artery, throat and wind pipe were cut. Injuries were anti-mortem in nature and cause of death was haemorrhage & shock on account of the injuries i.e. incised wounds. Therefore, in view of the above evidence of the doctor, it is established that death of Kachra Bai was homicidal in nature.

Learned counsel for the accused/appellant has also not disputed the involvement of accused/appellant in crime in question. He simply argued

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that relations between the accused and the deceased were not cordial, in the fateful night some quarrel took place between the two and on account of the quarrel, in a heat of passion, the accused/appellant attacked the deceased with rapa, therefore, the offence against the accused/appellant does not travel beyond Section 304-II of the IPC.

On the other hand learned counsel for the State supported the judgment of the trial court.

In the present case there is no ocular or direct evidence and the conviction of accused is based on the following circumstantial evidence;

1. That, the accused and the deceased were last seen together in the house and the murder of Kachra Bai was committed in the house of accused/appellant.
2. That, rapa, weapon of offence was recovered at the instance of accused/appellant from his house.
3. That, rapa and clothes of the accused were found stained with blood.
4. That, the accused made extrajudicial confession before PW-8 Horilal & PW-9 Purandas.

1st circumstance:

As far as this circumstance is concerned, it is admitted position that Kachra Bai was attacked in her house, her dead body was lying in the house, there was blood on the ground at the place of occurrence, which was seized by the Investigating Officer, the accused made extrajudicial confession before PW-9 Purandas as also before PW-8 Horilal and the accused/appellant has not explained anything that he was not present in the house, as such, the prosecution has established that in the fateful night

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when the murder of Kachra Bai was committed in her house, the accused/appellant was present in the house.

2nd Circumstance:-

As far as this circumstance is concerned, PW-6 Phoolsai has stated that the accused has signed on memorandum Ex.P-9 which bears his signature at 'A to A' place. PW-7 Khusram has stated that seizure memo Ex.P-13 was prepared in his presence, rapa, weapon of offence was seized from the accused in his presence under Ex.P-13. The clothes of accused were also seized under Ex.P-14. In Para-14 of cross-examination PW-7 has stated that when the accused took out the rapa number of persons were standing there. He has further stated that there was blood on the rapa. The Investigating Officer (PW-21) Shri A.K. Bajpai has stated that accused gave memorandum Ex.P-7 and in pursuance of that accused produced rapa, which was taken into possession under Ex.P-13. Therefore, it is established that weapon of offence i.e. rapa stained with blood was recovered at the instance of accused/appellant from his house.

3rd Circumstance:-

As far as this circumstance is concerned, recovered articles i.e. Rapa, towel, shirt and baniyan of the accused were sent for chemical examination to the Forensic Science Laboratory, Sagar and as per FSL report (Ex.P-30) on all these articles blood was found. Therefore, it is established that on the clothes of accused and Rapa, weapon of offence, there was blood. The accused/appellant has not explained anything that how the blood was found on his clothes and rapa.

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4th Circumstance:-

As far as this circumstance is concerned, Purandas (PW-9) has stated that Natthu, brother of accused, informed him that his brother Nakchhed has committed murder of his wife. Thereafter, he saw Nakchhed in the vicinity carrying lathi in his hand, on enquiry Nakchhed informed him that he has committed murder of his wife, on which he went to the house of Nakchhed where he saw the wife of Nakchhed in dead condition. This witness, in cross-examination by learned counsel for the accused, has categorically stated in Para-6 that after informing by Natthu, brother of accused, he enquired from the accused when he met him on the way and the accused said him that he has committed murder of his wife, on which he said to him that let us go to your house, at that time Nakchhed was carrying lathi in his hand. PW-8 Horilal has stated that Jammu, daughter of Nakchhed, was informing her uncle Natthu that her father has committed murder of her mother, thereafter, Natthu scolded Nakchhed and said as to why he has murdered his wife, on this Nakchhed replied that what happened if he has murdered his wife. Therefore, in view of the evidence of PW-8 Horilal & PW-9 Purandas, it is established that the accused made extrajudicial confession in the presence of PW-8 Horilal & PW-9 Purandas and in the cross-examination of these two witnesses the defence has not been able to elicit any circumstance which shows that the extrajudicial confession made by the accused was involuntary. Moreover, the extrajudicial confession stands corroborated by the fact that Kachra Bai, wife of accused was lying dead in the house and there were as many as eight incised wounds on her body, which has been established by the evidence of medical jurist as also inquest report Ex.P-11. Apart from that

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the dead body of Kachra Bai was found in the house of accused and the accused has not explained anything as to how Kachra Bai sustained all those injuries. As per Section 106 of the Evidence Act, when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. In the present case, the murder was committed in the house of accused and he has not explained any circumstance under which the murder of Kachra Bai was committed, therefore, this circumstance is an additional circumstance to connect the accused with the crime in question.

As far as the argument advanced by learned counsel for the accused/appellant that the accused assaulted the deceased in a sudden quarrel and in the heat of passion is concerned, there is nothing in the evidence which shows that any quarrel took place between the two and in that process the accused assaulted the deceased. Even PW-8 Horilal & PW-9 Purandas before whom the accused made extrajudicial confession have not stated that the accused while making extrajudicial confession had stated that there was any quarrel between the two and in a heat of passion the accused attacked his wife. As such, there is no material on record to show that any quarrel took place between the accused and the deceased and in that process the accused attacked the deceased. The manner in which the accused attacked the deceased with rapa, a deadly weapon, as a result of which her wind pipe, nerve, muscle and carotid artery were cut and the accused assaulted the deceased as many as eight times on account of which eight incised wounds were caused on the vital part of her body, therefore, the intention of the accused to commit the murder of Kachra Bai was writ large.

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In view of the above circumstances established by the prosecution irresistible conclusion can be drawn that the accused was the author of crime in question.

For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of trial court convicting and sentencing the accused for commission of murder of Kachra Bai.

In the result, the appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.